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April 9, 1998

VIA FACSIMILE DELIVERY

The Honorable Lewis Hall Griffith
The Honorable Edward Dreyfus
The Honorable Jeffrey S. Gulin
c/o Gina Giuffreda, CARP Specialist
Office of the Register of Copyrights
Room LM-403
James Madison Memorial Building
101 Independence Avenue, S.E.
Washington, D.C. 20540

Re: Noncommercial Educational Broadcasting Compulsory
License (Docket No. 96-6 CARP NCBRA)

Dear Judges Griffith, Dreyfus, and Gulin:

This letter summarizes the current status of the documents which were originally the subject of the Public Broadcasters' motion to strike the testimony of Carol Grajeda. Attached hereto as Schedule A is a chart setting forth the documents, by exhibit number, which are incorporated by Ms. Grajeda's testimony, along with a designation as to each document indicating that: (i) the Public Broadcasters are withdrawing their objection; (ii) the Public Broadcasters are continuing their motion to strike; (iii) the document has already been received into evidence during the testimony of another witness¹; or (iv) the Public Broadcasters continue to object to the document solely on hearsay grounds.

1. Documents previously admitted as hearing exhibits have been so designated, with an indication as to the specific hearing exhibit number, on the attached chart.

The Honorable Messrs. Griffith, Dreyfus and Gulin
April 9, 1998
Page 2

The documents as to which the Public Broadcasters continue to move to strike can be categorized into four general classes as follows:

1. Grajeda-Sponsored Documents Cited by Other ASCAP Witnesses. Several of the documents sponsored by Ms. Grajeda were also cited to by certain other ASCAP witnesses in their written direct testimony. (These documents can be identified on the attached chart as those which the Public Broadcasters are continuing to move to strike on "hearsay grounds only.") The Public Broadcasters do not believe it is necessary to require the other witnesses who have cited to these exhibits to return to the stand to sponsor them. However, these documents -- which are comprised of third-party created documents (see Section 2 below) or news articles (see Section 4 below) -- constitute hearsay, and the Public Broadcasters object to any of this material coming into evidence on any grounds other than that the material was generally relied upon by the testifying expert, and not for the truth of the matter asserted.²

2. Documents Prepared by Third Parties. The Public Broadcasters continue their motion to strike with respect to certain documents which were not created by PBS, NPR, CPB or individual public radio and public television stations (other than news articles, which are addressed below). These documents include promotional materials of the Association of Public Television Stations (Exs. 314-15), excerpts from materials of Public Radio International (PRI) (Exs. 322 and 334), and materials from the American Program Service (Exs. 335-336). They also include charts prepared by Carol Grajeda (Exs. 339-342, 400, 600), and purported information on television and radio ratings (Ex. 703). Finally, this class of materials also includes documents prepared by others but distributed or funded by CPB (Exs. 303 and 305).

As set forth in the Public Broadcasters' original motion, these documents were not created by employees of PBS, NPR, CPB or individual public television and radio stations. The materials indisputably contain hearsay, and do not qualify for any exception to the general rule against hearsay. Moreover, Ms. Grajeda is clearly not a proper sponsoring witness for these

2. Specifically, these documents include exhibits 323-324; 335-336; 505-507; 511.3, .4, .6-.9; 513; 514.4-.5, .12-.13, .20-.22; 515.4, .14, .16; 516.12-13; 519.50, .52; 523; 702; 704; 710.17; 720.16, .18-.19.

The Honorable Messrs. Griffith, Dreyfus and Gulin
April 9, 1998
Page 3

documents, and no other ASCAP witness has cited to these documents in his or her testimony.

Further, with respect to documents created by third parties, but funded by CPB, the mere fact that these materials have been produced with the assistance of CPB is not a sufficient ground on which to admit this material into evidence. CPB exists for the purpose of distributing federally allocated funds for use by hundreds of entities, and the fact that some of this money is used by third parties to create an article or conduct a study does not exempt this material from application of the hearsay rule. Indeed, several of these documents specifically state that the opinions contained therein "do not necessarily reflect opinions or policies of the Corporation." (See, e.g., Ex. 303.12, 303.19, 303.30, and 303.37.) Accordingly, these materials should be stricken from the record.

3. Web Pages of Public Radio and Television Stations (as Opposed to the Web Pages of PBS, NPR or CPB). The panel has ruled that, Mr. Jablow and Mr. Downey were appropriate sponsoring witnesses for certain of ASCAP's exhibits consisting of web pages of individual public radio and television stations. See, e.g., Transcript at 2517. However, the Panel admitted these documents into evidence for the limited purpose of showing that the relevant material appeared on a particular station's web site, and not as evidence of actual station practice. Id. In order to avoid unnecessary rebuttal testimony, the Public Broadcasters have proposed to ASCAP that the parties agree to the admission into evidence of the remaining individual station web site pages and documents (Exs. 328, 414³, 500-504, 615-623) subject to the same limitations as were previously imposed by the Panel on the comparable documents admitted during the cross-examination testimony of Messrs. Jablow and Downey. As ASCAP has refused to so agree, the Public Broadcasters are constrained to continue their motion to strike these documents.

3. Exhibits 328 and 414 are not web pages, but are other documents apparently produced by public television stations. The documents contained in Ex. 328 are promotional materials related to the PBS show "Charlie Horse Pizza" and Ex. 414 is a merchandise catalog purportedly produced by public television station WGBH. The Public Broadcasters would treat these documents the same as the web pages for purposes of the instant motion.

The Honorable Messrs. Griffith, Dreyfus and Gulin
April 9, 1998
Page 4

4. Current Magazine and Other News Excerpts. The Public Broadcasters continue their motion with respect to documents sponsored by Ms. Grajeda consisting of news articles from Current magazine and other sources (to the extent such articles were not admitted into evidence during the course of the proceedings, or were not cited to by another ASCAP witness). As we have previously stated, these documents are classic hearsay. Moreover, as the Panel will recall, the testimony by Public Broadcaster witnesses during cross-examination as to comparable articles proffered by ASCAP shows that such articles are rife with factual errors and misstatements, and thus are inherently unreliable. Since ASCAP has not presented a sponsoring witness who can respond knowledgeably on cross-examination to questions concerning potential inaccuracies or misstatements in these articles (and no Public Broadcaster witness has been asked to comment on their truth or accuracy), we respectfully submit that the Panel should grant the Public Broadcasters' motion to strike the news excerpts contained at Exs. 329, 505-525 (other than the pages of these exhibits identified, in point 1, above), 703, 705-720 (other than the pages of these exhibits identified, in point 1, above).

In conclusion, the Public Broadcasters withdraw their motion to strike those exhibits so identified on the attached chart and request that their motion to strike the remaining documents sponsored by Carol Grajeda be granted for the reasons stated above.

Respectfully submitted,



Jonathan T. Weiss

cc: Service List

SCHEDULE A

SCHEDULE OF GRAJEDA EXHIBITS

EXS.	STATUS OF BROADCASTERS' MOTION	DESCRIPTION
9-16	withdraw motion to strike	
300-02	withdraw motion to strike	
303	continue motion to strike	CPB Info-Packets
304	withdraw motion to strike	
305	continue motion to strike	LeRoy Reports
306-13	withdraw motion to strike	
312	in evidence as per Panel's ruling	
314-15	continue motion to strike	APT Pamphlets
316-21	withdraw motion to strike	
322	continue motion to strike	Excerpts from PRI Website
323-24	continue motion on hearsay grounds only	PRI 1996 Report and Affiliate List
325-27	withdraw motion to strike	
328	continuc motion on hearsay grounds only	<u>Charlie Horse Pizza</u> Underwriting Solicitation
329	continue motion to strike	<u>Current</u> Article
330-31	withdraw motion to strike	

EXS.	STATUS OF BROADCASTERS' MOTION	DESCRIPTION
332-33	withdraw motion to strike	
334	continue motion to strike	PRI Report from Minnesota
335-36	continue motion on hearsay grounds only	APS Materials
337-38	withdraw motion to strike	
339-42	continue motion to strike	Grajeda charts
400	continue motion to strike	Grajeda chart
401-13	withdraw motion to strike	
414	continue motion to strike	WGBH Mail Order Catalogue
500	500.3-500.8, 500.19-500.32, 500.51-500.94, 500.115-500.132, 500.161-500.162, 500.171-500.190, 500.213-500.220, 500.291-500.322, 500.349-500.392, 500.411-500.414, 500.441-500.480 in evidence as ASCAP 6x; otherwise continue motion to strike	underwriting materials from station websites
501-504	continue motion to strike	fundraising, merchandising and national and local programming materials from station websites
505	505.32-33, 505.69 in as ASCAP 1x and 13x; otherwise continue motion on hearsay grounds only	<u>Current</u> Articles
506-07	continue motion on hearsay grounds only	<u>Current</u> Articles
508	continue motion to strike	<u>Current</u> Articles

EXS.	STATUS OF BROADCASTERS' MOTION	DESCRIPTION
509-10	continue motion to strike	<u>Current</u> Articles
511	pp. 3-4, 6-9 continue motion on hearsay grounds only; otherwise continue motion to strike	<u>Current</u> Articles
512	continue motion to strike	<u>Current</u> Articles
513	continue motion on hearsay grounds only	<u>Current</u> Articles
514	4-5, 12-13, 20-22 continue motion on hearsay grounds only; otherwise continue motion to strike	<u>Current</u> Articles
515	515.6 in evidence as ASCAP 16x, 515.5, 515.14, 515.16 continue motion on hearsay grounds only; otherwise continue motion to strike	<u>Current</u> Articles
516	516.14 evidence as ASCAP 2x; 516.12-13 continue motion on hearsay grounds only; otherwise continue motion to strike	<u>Current</u> Articles
517-18	continue motion to strike	<u>Current</u> Articles
519	519.9-10 in evidence as ASCAP 11x, 519.14 in evidence as ASCAP 23x, 519.50, 519.52 continue motion on hearsay grounds only; otherwise continue motion to strike	<u>Current</u> Articles
520	continue motion on hearsay grounds only	<u>Current</u> Articles
521-22	521.13-14 in evidence as ASCAP 19x, otherwise continue motion to strike	
523	continue motion on hearsay grounds only	<u>Current</u> Articles
524-25	continue motion to strike	<u>Current</u> Articles

EXS.	STATUS OF BROADCASTERS' MOTION	DESCRIPTION
600	continue motion to strike	Grajeda charts
601-14	withdraw motion to strike	
615-23	615.9-11, 615.37-42, 615.58-71, 615.79-84, 615.100-139, 615.159-177, 615.218-258 in evidence as ASCAP 24x, otherwise continue motion on hearsay grounds only	Radio Station Website materials
700-01	withdraw motion to strike	
702	continue motion on hearsay grounds only	1997 T.V. Ratings
703	continue motion to strike	1997 Radio Ratings
704	continue motion on hearsay grounds only	<u>New York Times</u> Article
705-09	continue motion to strike	News Articles
710	710.17 continue motion on hearsay grounds only; otherwise continue motion to strike	News Articles
711	continue motion on hearsay grounds only	News Articles
712-13	712.15-16 in as ASCAP 12x, 713.29 in evidence as ASCAP 5x, 713.55 in evidence as ASCAP 7x; otherwise continue motion to strike	News Articles
714-19	continue motion on hearsay grounds only	News Articles
720	720.16, 720.18-19 continue motion on hearsay grounds only; otherwise continue motion to strike	News Articles

**Before the
COPYRIGHT ARBITRATION ROYALTY PANELS
Library of Congress**

In the Matter of)	
)	
Adjustment of the Rates for)	Docket No. 96-6
Noncommercial Educational)	CARP NCBRA
Broadcasting Compulsory License)	

CERTIFICATE OF SERVICE

I am an associate at Weil, Gotshal & Manges LLP. I caused to be served on April 9, 1998 true copies of the letter dated April 9, 1998 as follows:

By facsimile: Beverly A. Willett, Esq.
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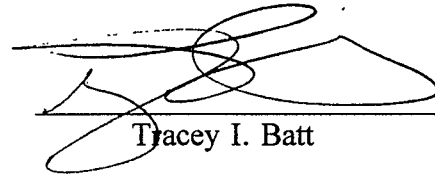
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Dated: New York, NY
April 9, 1998



Tracey I. Batt